



**In the Matter of:**

**JEROME REID,**

**ARB CASE NO. 01-083**

**COMPLAINANT,**

**ALJ CASE NO. 2001-ERA-26**

**v.**

**DATE: December 10, 2001**

**NIAGARA MOHAWK POWER CORP.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>**

**Appearances:**

*For the Complainant:*

Jerome Reid, *pro se*

*For the Respondent:*

Robert A. LaBerge, Esq., *Bond, Schoeneck & King, Syracuse, New York*

**ORDER DENYING FOURTH MOTION FOR AN EXTENSION OF TIME  
AND DISMISSING THE APPEAL**

The complainant, Jerome Reid, has filed a Motion requesting that he be granted an additional sixty days to submit an opening brief to the Administrative Review Board (ARB) in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851 (1995).

On July 27, 2001, Reid filed a petition for review with the ARB, requesting the Board to review a Department of Labor Administrative Law Judge's Recommended Decision and Order in this case. On August 1, 2001, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. The ARB ordered Reid to file his initial brief by August 31, 2001. Reid subsequently requested a thirty-day enlargement of time to file the brief. The Board granted the request and gave Reid until September 28, 2001, to file his brief. Reid filed for a second thirty-day enlargement of time to file his brief. The Board granted the enlargement and gave him until October 29, 2001, to file his brief, but informed Reid that the Board would look upon additional requests for enlargement of time with disfavor. Nevertheless, Reid filed a third request for an enlargement of time to file the

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<sup>1/</sup> This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

brief. The Board denied Reid's motion for a sixty-day enlargement of time, but granted Reid a thirty-day enlargement until December 3, 2001, to file his brief and cautioned him that barring extraordinary circumstances, the Board would grant no further enlargements.

Reid failed to file his initial brief on December 3, 2001, as ordered. Instead on that day, Reid faxed to the Board a request for a further sixty-day enlargement of time. In the request, Reid noted:

My employer has taken disciplinary action against me in regards to my filing complaints against them. The lost [sic] of wages and the threat of losing my job has made it very difficult for my family and I.

Reid has failed to demonstrate how the fact that his employer has taken disciplinary action against him has precluded him from timely filing his opening brief.<sup>2/</sup> Accordingly, Reid has failed to demonstrate exceptional circumstances in support of his request for a fourth extension of time, and his motion for such extension is **DENIED**.

Furthermore, the Board has the inherent power to dismiss a case if a petitioning party fails to submit an opening brief as provided in the Board's briefing order. *Solnicka v. Washington Public Power Supply System*, ARB No. 00-009, ALJ No. 99-ERA-19, slip op. at 3 (ARB Apr. 25, 2000). *Accord Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962) (recognizing that courts have the inherent power to dismiss a case for failure to prosecute). Like the courts, this Board must necessarily manage its docket in an effort to "achieve the orderly and expeditious disposition of cases." *Id.* at 631. Thus, given Reid's failure to submit an opening brief as ordered, we find that Reid has failed to prosecute his case. Accordingly, we **DISMISS** Reid's appeal.

**SO ORDERED.**

**CYNTHIA L. ATTWOOD**  
Member

**RICHARD A. BEVERLY**  
Alternate Member

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<sup>2/</sup> We note that to the extent Reid is alleging that Niagara Mohawk has further retaliated against him, this additional complaint is not properly before the Board because under the ERA, the Board has jurisdiction to review recommended decisions and orders of ALJs. 29 C.F.R. §24.8(a). Reid has not petitioned the Board to review an ALJ's recommended decision and order regarding this additional complaint.